



2101 Wilson Boulevard
Suite 400
Arlington, Virginia 22201-3061
U.S.A.

Tel 703-528-3049
Fax 703-528-3705
www.usdec.org

May 7, 2004

Angela C. Snyder
Office of the Deputy Administrator
Poultry Programs
Agricultural Marketing Service (AMS)
U.S. Department of Agriculture
Stop 0256, Room 3932 South
1400 Independence Avenue, SW
Washington, DC 20250

Dear Ms. Snyder:

We appreciate the opportunity for input regarding the proposed amendment to the Dairy Promotion and Research Order (Dairy Order) that will add a new section 1150.157 authorizing an organic exemption to dairy checkoff assessments.

As an organization that receives funds under contract from the dairy checkoff, the U.S. Dairy Export Council would like to make recommendations and comments to facilitate managing this proposed new aspect of the program.

- 1 The organic exemption does not preempt or supersede any applicable state statute or regulation and mandates the payment of an assessment on milk. To that end, any "person" who would be exempt under the organic exemption would still be required to pay the assessment due pursuant to state or regulation unless the state had a similar exemption. It should be the responsibility of the National Dairy Board to inform the person seeking an exemption of this obligation should they be exempt under the Dairy Order. Any exemption certificate should clearly state that the certificate does not exempt the producer from payment of assessments due under state law or regulation.
2. Paragraph (a) as presented in the proposed Rule (§1150.158(a)) should be amended to add the following sentence: "In order to be eligible under the exemption under this section, a producer must not be owned, in whole or in part, or otherwise affiliated with a person that is subject to and pays assessments to a research and promotion program administered by the USDA, or that produces conventional non-organic agricultural products." This language needs to be added to prevent producers who produce both





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organic and conventional products from using the exemption to circumvent payment of assessments. Under the proposed Rule, a company that is subject to assessments could create a subsidiary and argue that it deals in 100% organic products and therefore should benefit from the organic exemption.

This can be highlighted as follows:

Company A is a producer that produces and markets a 100 percent organic commodity. However, Company A is a wholly owned subsidiary of Company B that produces and markets non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company A is the parent company of Company B that produces non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company B has a majority ownership interest in Company A, and Company B produces non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company B has a minority ownership interest in Company A, and Company B produces non-organic commodities. Company A is not exempt.

We appreciate the opportunity to submit these comments for your consideration. Should you have any questions, please contact me at 703-528-3049.

Sincerely,

Thomas M. Suber
President
U.S. Dairy Export Council